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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT SEATTLE

9 CHARLES RICE,

10 Plaintiff,

11 v.

12 ICICLE SEAFOODS, INC.,

13 Defendant.

Case No. C08-0116RSL

ORDER GRANTING  
MOTION TO DISMISS

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15 This matter comes before the Court on defendant's motion to dismiss plaintiff's  
16 complaint with prejudice for failure to prosecute, as a sanction for plaintiff's failure to  
17 participate in discovery, and/or based on lack of merit. Plaintiff, who is proceeding *pro*  
18 *se*, claims that defendant, his former employer, discriminated against him based on his  
19 race in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.*,  
20 ("Title VII").

21 Although plaintiff participated in preparing the joint status report in this case, he  
22 has not participated in discovery in any other way. He has never provided his initial  
23 disclosures, which were due on March 21, 2008. Plaintiff has not provided responses to  
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26 ORDER GRANTING  
MOTION TO DISMISS - 1

1 defendant's written discovery requests, including (1) defendant's first set of  
2 interrogatories and requests for production, served on May 27, 2008, and (2) defendant's  
3 requests for admissions served on July 16, 2008. Nor has plaintiff provided any  
4 explanation for his failure to respond to those discovery requests. Defense counsel  
5 attempted to discuss plaintiff's failure to participate in discovery, but plaintiff refused to  
6 participate in a telephone conference with defense counsel.  
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8 By order dated October 27, 2008, the Court found that plaintiff had willfully  
9 refused to comply with his discovery obligations and had refused to confer with  
10 defendant in violation of Local Rule 37(a)(2)(A). Dkt. #15 (the "Order"). The Order  
11 reminded plaintiff that he must meet his discovery obligations and if he failed to do so  
12 again, the Court could impose sanctions on him pursuant to Local Rule 37, Federal Rule  
13 of Civil Procedure 37, and General Local Rule 3. The Order further warned plaintiff,  
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15 If he does not fully respond to the requests for admission, the matters contained in  
16 those requests will be deemed to have been admitted by plaintiff as set forth in  
17 Federal Rule of Civil Procedure 36(a)(3). Furthermore, plaintiff is hereby  
18 expressly warned that if he fails to provide his initial disclosures and to respond to  
19 defendant's discovery requests by November 14, 2008, defendant may move the  
20 Court to dismiss the case, and the Court may dismiss the case on the merits and/or  
21 pursuant to Federal Rule of Civil Procedure 37(b)(2).

22 Order at p. 3.

23 Despite the clear warning in the Order, plaintiff has not provided his initial  
24 disclosures or responded to defendant's discovery requests. Nor has he provided any  
25 explanation for his continuing failure to comply with his discovery obligations and the  
26 Court's order.

In light of these facts, the Court must evaluate whether plaintiff has failed to

1 prosecute his case pursuant to Fed. R. Civ. P. 41(b) and whether dismissal is warranted as  
2 a sanction pursuant to Fed. R. Civ. P. 37. Plaintiff has not been diligent about litigating  
3 this case. Furthermore, the Court must manage its docket, and cannot allow cases to  
4 languish for approximately a year while plaintiff repeatedly disregards his discovery  
5 obligations and a clear Order of the Court. The public also has an interest in expeditious  
6 resolution of cases to avoid the needless expenditure of public funds and resources.  
7 Plaintiff filed this case, and bears responsibility for prosecuting it. Since participating in  
8 filing the joint status report in March 2008, plaintiff has shown no intent to litigate this  
9 case. Defendant has suffered prejudice because of its inability to obtain basic discovery  
10 regarding plaintiff's claims. Although plaintiff is proceeding pro se, he is required to  
11 comply with the rules and orders of the Court. See, e.g., Jacobsen v. Filler, 790 F.2d  
12 1362, 1364-65 (9th Cir. 1986).

14         The Court has considered other sanctions, but found that they would not be  
15 effective. For example, a monetary sanction would not cure the prejudice to defendant.  
16 In addition, plaintiff has shown that he has no regard for an Order of the Court; he failed  
17 to comply despite the clear warnings in the Order. Nor does it appear that an evidentiary  
18 sanction would cure plaintiff's recalcitrance or apparent apathy towards this case.  
19 Moreover, an evidentiary sanction is unnecessary. As the Order warned, the Court  
20 considers the matters contained in the requests for admissions as admitted by plaintiff as  
21 set forth in Federal Rule of Civil Procedure 36(a)(3). Once those matters are admitted,  
22 plaintiff's case is fatally undermined. See Declaration of Kara Heikkila, (Dkt. #12)  
23 ("Heikkila Decl."), Ex. C (request for admission stating, "Please admit that no one at  
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1 Icicle Seafoods, Inc. discriminated against you on the basis of your race”). For all of  
2 these reasons, the Court dismisses plaintiff’s claims based on his failure to prosecute his  
3 case and as a sanction for his refusal to comply with this Court’s Order and respond to  
4 defendant’s discovery requests.


5       Although public policy supports consideration of a case on the merits, doing so in  
6 this case leads to the same result. Defendant moved to dismiss this case on the merits,  
7 and plaintiff did not respond to the motion. Pursuant to Local Rule 7(b)(2), the Court  
8 construes the failure to respond as an admission that the motion has merit. Defendant has  
9 filed evidence showing that it discharged plaintiff because he violated defendant’s anti-  
10 harassment policy. Heikkila Decl., Ex. A. Plaintiff has not filed any evidence in support  
11 of his claim. As set forth above, the Court deems admitted defendant’s request for  
12 admission that defendant did not discriminate against plaintiff. Accordingly, dismissal on  
13 the merits is warranted.

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15       For all of the foregoing reasons, defendant’s motion to dismiss (Dkt. #16) is  
16 GRANTED. This case is dismissed with prejudice. The Clerk of the Court is directed to  
17 enter judgment in favor of defendant and against plaintiff.

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19       Pursuant to Fed. R. Civ. P. 37, defendant seeks an awards of its costs and fees  
20 incurred in bringing this motion. Federal Rule of Civil Procedure 37(b)(2)(C) states that  
21 if a party fails to comply with a discovery order of the court, “the court must order the  
22 disobedient party . . . to pay the reasonable expenses, including attorney’s fees, caused by  
23 the failure, unless the failure was substantially justified or other circumstances make an  
24 award of expenses unjust.” There is no evidence that plaintiff’s failure was substantially

1 justified, or that an award would be unjust. Therefore, the Court awards defendant its  
2 reasonable attorney's fees and costs incurred in filing this motion. However, the  
3 declaration submitted by counsel is insufficient to establish the amount of attorney's fees  
4 and costs incurred. Counsel's declaration states that her office "billed approximately  
5 \$874.00 in fees and costs." Second Declaration of Kara Heikkila, (Dkt. #17). The Court  
6 will not award fees and costs based on an approximation. Nor does the declaration  
7 indicate the amount of costs incurred, the basis for the costs, the number of hours  
8 expended on this matter, or the specific tasks performed. Without that information, the  
9 Court cannot evaluate the reasonableness of the amount requested. Defendant may file a  
10 supplemental declaration supporting its request for an award of fees and costs within ten  
11 days of the date of this order.  
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14 DATED this 17th day of December, 2008.  
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18 Robert S. Lasnik  
19 United States District Judge  
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